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March 19, 2001

BY HAND

Magalie R. Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-B204
Washington, D.C. 20554

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Re: Comments of the Commonwealth of the Northern Mariana Islands;
Local Competition and Broadband Reporting: CC Docket No. 99-301

Dear Ms. Salas:

Please find enclosed for filing an original and five (5) copies of the Comments of the Commonwealth of the Northern Mariana Islands in the above-referenced proceeding.

Please file-stamp the extra copy of this filing and return it in envelope enclosed for that purpose. Should you have any questions regarding this filing, please contact the undersigned.

Sincerely,



Thomas K. Crowe
Tania J. Cho,
Counsel for the Commonwealth of the
Northern Mariana Islands

Enclosures

cc: Suzanne McCrary (2 copies)
International Transcription Services

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Local Competition and Broadband Reporting)

CC Docket No. 99-301

**COMMENTS OF THE COMMONWEALTH
OF THE NORTHERN MARIANA ISLANDS**

The Commonwealth of the Northern Mariana Islands ("Commonwealth"), by its attorneys, respectfully submits the following comments in response to the Commission's *Second Notice of Proposed Rulemaking* released on January 19, 2001 in the above captioned matter.¹

I. INTRODUCTION

The Commonwealth applauds the Commission's desire to better understand the deployment of broadband services and the development of local competition. In particular, the Commonwealth shares the Commission's belief that additional data about deployment and availability of broadband services to discrete geographic areas and among certain demographic groups is essential to satisfy the Commission's obligations under Section 706 of the Telecommunications Act of 1996.² Gathering information on the availability of broadband services in certain geographic locations deemed to be vulnerable to not having timely access to broadband services is crucial in identifying

¹ *In the Matter of Local Competition and Broadband Reporting, Second Notice of Proposed Rulemaking*, CC Docket No. 99-301, FCC 01-19 (Jan. 19, 2001) ("*SNPRM*")

² Pub. Law No. 104-104, Title VII, § 706, Feb. 8, 1996, 110 Stat. 153, reproduced in the notes under 47 U.S.C. § 157 ("1996 Act").

the current status of advanced telecommunications services.

Access to broadband services in the Commonwealth is uniquely important in view of its insular nature and remote geographic location from the mainland United States.³ Due to its location, travel by air to and from the Commonwealth is extremely costly and U.S. mail and delivery services can take days and sometimes weeks to deliver documents and materials. As a result, U.S. citizens in the Commonwealth often have to depend on telecommunications services to gain access to much needed resources and information. Thus, the availability of affordable high-speed broadband services will be vitally important to U.S. citizens in the Commonwealth.

With the objective of promoting economic development, the Commonwealth has continuously sought closer integration into the U.S. telecommunications infrastructure.⁴ However, the Commonwealth has historically encountered a lag when new technologies and new communications policies are introduced. For example, while traditionally underserved areas such as Alaska and Hawaii and insular areas such as Puerto Rico and the U.S. Virgin Islands began to benefit from rate integration decades ago, the Commonwealth was only encompassed under rate integration since September 1, 1997.⁵ The Commonwealth wants to ensure that it does not suffer a similar fate with respect to broadband services deployment.⁶

³ A concise background Exhibit is attached in support of the instant comments. *See* Exhibit at 2 for information on the Commonwealth's location.

⁴ *See* Exhibit at 3.

⁵ *See id.*

⁶ To date, broadband or advanced telecommunications services are generally not available to business or residential consumers in the Commonwealth.

As demonstrated below, the Commission should clarify its Form 477 and the accompanying Instructions to eliminate ambiguity and prevent providers from concluding that data reporting for the Commonwealth is only voluntary. The Commonwealth also strongly opposes Iowa Telecom's petition for an exemption of the reporting requirements for rural telephone companies. In addition, the Commission should expand the scope of the data collection obligation to encompass data on both availability as well as subscribership. Finally, the Commonwealth supports the Commission's proposal to eliminate altogether the reporting threshold for broadband reporting.

**II. THE COMMISSION SHOULD CLARIFY FCC FORM 477
TO PREVENT PROVIDERS FROM CONCLUDING THAT
REPORTING FOR THE COMMONWEALTH IS VOLUNTARY**

The Commission should clarify FCC Form 477 and the accompanying Instructions to prevent providers from concluding that reporting for the Commonwealth is strictly voluntary. The current Instructions for Form 477 indicate that for purposes of defining the term "state", [a filer is to] treat the District of Columbia, Puerto Rico and the U.S. Virgin Islands as states."⁷ The Instructions go on to state that "*voluntary submissions* (emphasis added) for American Samoa, Guam, and the Northern Mariana Islands may also be indicated on this line."⁸ Thus, the

⁷ See Instructions for Local Competition and Broadband Reporting Form, FCC Form 477, March 2000. The Commonwealth is considered a "state" under Section 3(40) of the Communications Act of 1934, as amended. 47 U.S.C. § 3(40) (2000). The Commission has expressly ruled that the term "state" applies to the Commonwealth. See e.g., *In re* Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, *Report and Order*, 11 FCC Rcd. 9564 (1996); *In re* Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, *Second Report and Order*, and *Third Report and Order*, 12 FCC Rcd. 15756 (1997).

⁸ See *id.*

Instructions are ambiguous as to whether a provider's data submission for the Commonwealth is mandatory or voluntary irrespective of the reporting threshold.

The Commonwealth believes that the Form 477 and Instructions, in their current form, create confusion for providers as to whether submission of data from the Commonwealth (as well as Guam and American Samoa) is voluntary. While the Commission most likely intended for broadband and local exchange providers to voluntarily submit data even when they do not meet the reporting thresholds, some providers may interpret the Instructions as stating that submission of data is voluntary only – irrespective of the threshold – for those geographic locations.

The Commission noted in its Second Report on Advanced Telecommunications Capability⁹ that except for Puerto Rico, no broadband data was filed for any of the U.S. territories. However, it is unclear whether such absence signifies that there were no broadband service providers that met the reporting threshold in those areas or whether such providers were uncertain about their obligation to file data under the *Data Gathering Order*.¹⁰ In view of Section 706's mandate that the Commission ensure that "all Americans" have access to advanced telecommunications capability,¹¹ the Commission should revise Form 477 and its Instructions to prevent providers from mistakenly concluding that submission of data for the Commonwealth is voluntary.

⁹ See *In the Matter of Local Competition and Broadband Reporting, Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, Second Report*, CC Docket No. 98-146, FCC 00-290 (rel. Aug. 21, 2000) ("*Second Report*").

¹⁰ See *Second Report*, ¶ 77, n. 104. See also, *In the Matter of Local Competition and Broadband Reporting*, CC Docket No. 99-301, *Report and Order*, 15 FCC Rcd. 7717, 7722 (rel. March 30, 2000) ("*Data Gathering Order*").

¹¹ See *infra* at 5.

III. THE COMMONWEALTH STRONGLY OPPOSES AN EXEMPTION FOR RURAL TELEPHONE COMPANIES

The Commonwealth strongly opposes Iowa Telecom's petition for reconsideration¹² of the Commission's *Data Gathering Order* in which it sought an exemption from the reporting requirements for rural telephone companies.

Section 706(b) of the 1996 Act requires the Commission to undertake regular inquiries "concerning the availability of advanced telecommunications capability to *all Americans*."¹³ The Commission is directed to "determine whether advanced telecommunications capability is being deployed to *all Americans* in a reasonable and timely manner".¹⁴ In order to assess such a determination for "all Americans", it is essential that the Commission collect data on availability of broadband services for all categories of consumers, including those living in rural areas, such as the Commonwealth. It will be particularly important to collect data from rural areas so as not to further the deployment gap of advanced telecommunications services.

If the Commission were to permit an exemption for rural telephone companies, Micronesian Telecommunications Corporation ("MTC"), the incumbent monopoly provider in the Commonwealth, would appear to qualify for the exemption.¹⁵ Thus, MTC, the only local telephone service provider in the Commonwealth, would be exempt altogether from providing a data report of its broadband services, regardless of whether it meets the threshold reporting

¹² See *SNPRM* at ¶ 14.

¹³ See 1996 Act, *supra* note 2 (emphasis added).

¹⁴ See *id.*

¹⁵ See Commission Acknowledges Receipt of Letters of Self-Certifying LECs as Rural Telephone Companies, *Public Notice*, 13 FCC Rcd. 12096, 12114 (1998).

requirements. In the case of the Commonwealth, such an exemption would essentially prevent any data reporting from the entire jurisdiction, thus preventing the Commission from satisfying its requirements under Section 706 *vis-a-vis* the Commonwealth. Therefore, the Commonwealth urges the Commission to deny Iowa Telecom's petition for an exemption of the reporting requirements for rural telephone companies.

IV. THE SCOPE OF THE DATA COLLECTION SHOULD BE EXPANDED TO ENCOMPASS DATA ON AVAILABILITY AS WELL AS SUBSCRIBERSHIP

The scope of the data collection should be expanded to encompass data on availability of broadband services as well as subscribership. While the original *Data Gathering Order* was designed to focus on data concerning actual subscribership to measure deployment of broadband services, a survey on the actual availability of broadband services is essential for the Commission to fulfill its obligations under Section 706 of the 1996 Act.

As stated above, the Commission has an obligation to determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely manner. In order to assess such a determination, it is imperative that the Commission first determine whether such capabilities are available. Collecting data on availability will enable the Commission to determine broadband service providers' capabilities as well as their willingness to provide service in a given area. Thus, the Commission will be able to better assess the status of advanced telecommunications services to all Americans.

In measuring the availability of broadband services, the Commission should also collect information to ascertain the price at which broadband services are offered. The price for broadband services is a significant factor when determining availability. In many situations, while

broadband services may be available (*i.e.*, the provider is capable and willing to provide services) in a given area, the cost may be so high that consumers in those areas are unable to afford such services, thus rendering them essentially "unavailable".¹⁶ Therefore, the Commonwealth strongly supports expanding the data gathering to include reporting on availability as well as price factors.

V. THE COMMISSION SHOULD ELIMINATE THE THRESHOLD FOR BROADBAND REPORTING

The Commission should eliminate the threshold for broadband reporting altogether. In the *SNPRM*, the Commission expressed concern that the reporting threshold¹⁷ may prevent the Commission from collecting sufficient information on broadband services in rural areas as they are often served by relatively small incumbent local telephone companies.¹⁸ The Commonwealth shares the Commission's concern and fully supports the proposal for elimination of the reporting threshold.

Local telephone service in the Commonwealth is currently provided by the incumbent local exchange carrier, MTC. As the sole provider of local exchange service in the Commonwealth, if the MTC does not file a Form 477, the Commission has no way of determining whether it is because MTC does not offer such services or whether it is because MTC did not meet the

¹⁶ To determine price, the Commission may wish to, for example, collect data on average monthly charges.

¹⁷ Under the current rules, facilities-based providers with at least 250 full or one-way broadband lines (or wireless channels) in a given state are required to complete the applicable portions of Form 477 for that state. Local exchange carriers with 10,000 or more local telephone service lines (or fixed wireless channels) in a state are required to complete applicable portions of Form 477.

¹⁸ See *id.* at ¶ 13.

reporting threshold. Thus, in rural or sparsely populated areas, such as the Commonwealth, it would be extremely difficult to accurately ascertain the deployment of broadband services under the current reporting threshold. Without this information, it is not possible for the Commission to determine whether advanced telecommunications capability is being deployed to "all Americans" in accordance with its Section 706 obligations.

In order to achieve an accurate assessment of broadband services and fulfill Section 706 mandates, the Commission should eliminate the reporting threshold altogether so that any provider of broadband services must file a Form 477 for each state in which it has customers for its broadband services.

VI. CONCLUSION

The Commission should take each of the steps urged above with respect to its broadband and local competition reporting requirements to meaningfully facilitate the deployment of advanced telecommunications capability to "all Americans".

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Thomas K. Crowe', is written over a horizontal line.

Thomas K. Crowe

Tania J. Cho

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COUNSEL FOR THE COMMONWEALTH OF
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Dated: March 19, 2001

CERTIFICATE OF SERVICE

I, Hillary Taylor, a legal assistant with the Law Offices of Thomas K. Crowe, P.C., certify that on March 19, 2001, a copy of the foregoing Comments of the Commonwealth of the Northern Mariana Islands were served by first class U.S. mail, postage prepaid, or by hand delivery where indicated by an asterisk (*), upon the parties listed below.

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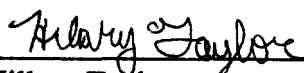
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